

## ATTACHMENT 3B1

### EXAMPLES OF ISSUE STATEMENTS IN BRIEFS FILED WITH THE OALJ OR THE AUTHORITY

#### I. WEINGARTEN VIOLATIONS

Whether Respondent violated section 7116(a)(1) and (8) of the Statute by denying unit employee Jackie Crocker's request for union representation during a September 30, 1997 meeting between Crocker and Supervisors Jones and Roe regarding Crocker's time and attendance?

Whether Respondent violated section 7116(a)(1) and (8) of the Statute by requiring union representative Bill Black to remain silent during Respondent's examination of unit employee Sally Jones on October 30, 1997 regarding Jones' failure to work overtime on October 15, 1997?

Whether Respondents NASA HQ and NASA OIG violated section 7116(a)(1) and (8) of the Statute when NASA OIG agent Steve Starr denied unit employee Bob Wright's request for union representation during a November 12, 1997 meeting between Wright and Starr concerning allegations that Wright had misused a government truck?

#### II. DATA INFORMATION

**Main Issue:** Whether the Respondents violated 5 U.S.C. § 7116(a)(1), (5) and (8) of the Statute by failing and refusing to furnish the Union with the requested unsanitized annotated drug testing lists.

**Sub Issues (insert as appropriate):**

1. Whether the Union articulated a "particularized need" for the unsanitized annotated drug testing lists sufficient to establish that such lists are "necessary" within the meaning of 5 U.S.C. § 7114(b)(4)(B).
2. Whether release of the unsanitized annotated drug testing lists to the Union is prohibited by the Privacy Act, 5 U.S.C. § 552a.

3. Whether the parties' Memorandum of Understanding concerning the drug testing program permitted the Agency to deny the Union's request for unsanitized annotated drug testing lists.
4. Whether the Respondent Department of Transportation independently violated 5 U.S.C. § 7116(a)(1) and (5) by preventing Respondent Northwest Mountain Region and Respondent Denver from providing the Union with the unsanitized annotated drug testing lists.

### III. FORMAL DISCUSSION

Whether the Respondent violated section 7116(a)(1) and (8) of the Statute by holding a formal discussion with a bargaining unit employee concerning a grievance without affording the Charging Party notice and an opportunity to be represented at the discussion, as required by section 7114(a)(2)(A) of the Statute?

### IV. UNILATERAL CHANGE IN CONDITIONS OF EMPLOYMENT

**Main Issues:** Whether Respondent violated § 7116(a)(1) and (5) of the Statute by unilaterally changing its practice of providing parking for bargaining unit employees without first giving the Charging Party notice and the opportunity to bargain, to the extent required by the Statute.

Whether Respondent violated § 7116(a)(1) and (5) of the Statute by implementing a change in conditions of employment of bargaining unit employees while the parties were bargaining and before reaching final agreement with the Charging Party.

#### **Sub Issues (insert as appropriate):**

1. Whether the impact of the change was more than *de minimis*.
2. Whether there was a duty to bargain, substance or impact and implementation. (Whichever is appropriate)

**Respondent's defense is a major contention:**

Whether the Respondent's defense that there was no duty to bargain because the matter is not "covered by" the contract lacks merit.

If Respondent's counsel has made a major issue of exigency:

Whether Respondent's defense that there was an overriding exigency, which required implementation, lacks merit.

**V. (a)(2) DISCRIMINATION**

Whether Respondent violated § 7116(a)(1), and (2) of the Statute when it issued a letter of counseling to a union steward who had been involved in filing seven unfair labor practice charges against the Respondent in the last year since engaging in protected activity was a motivating factor in the Respondent's decision to issue the letter of counseling.

**Respondent's defense is a major contention:**

Whether Respondent has failed to establish that it had a legitimate justification for issuing a letter of counseling to a union steward since it has not taken such actions in similar situations and would not have taken such action in this case absent the union steward's engagement in protected activities.

**VI. (a)(1) STATEMENT**

Whether Respondent violated § 7116(a)(1) of the Statute when two managers told a unit employee words to the effect that the union's filing of grievances against Respondent would cause the Respondent to be closed down unless employees took action to stop these filings.

**VII. MID-TERM BARGAINING**

Whether Respondent violated § 7116(a)(1) and (5) of the Statute by refusing to bargain over the Union's mid-term bargaining proposal that is substantially identical to proposals that the Authority has previously found negotiable.

**Respondent's defense is a major contention:**

Whether Respondent's defense that there was no duty to bargain because the matter is "covered by" the contract lacks merit.